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NO. 79172-4

SUPREME COURT OF THE STATE OF WASHINGTON

MARK POTTER, on behalf of himself
and the class he represents,

Appellant,

v.

WASHINGTON STATE PATROL,
a Washington State Agency,

Respondent.

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APPELLANT'S SUPPLEMENTAL BRIEF IN RESPONSE TO
RESPONDENT'S MOTION FOR RECONSIDERATION

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I. INTRODUCTION

Respondent Washington State Patrol has moved for reconsideration of this Court's August 30, 2007 Opinion on the basis that the post-deprivation hearing created under RCW 46.55.120 provides the exclusive remedy for owners of unlawfully impounded vehicles. The language, structure, and legislative history of the law demonstrate that the statutory hearing is not intended as the exclusive remedy for unlawful seizures and neither eliminates nor provides a full and fair substitute for existing common law remedies like those asserted by Appellant. For this reason, the Court should deny the State Patrol's Motion, affirm its judgment in favor of Appellant Mark Potter, and remand for further proceedings on Appellant's conversion claim.

II. ARGUMENT

A. Summary of Argument.

RCW 46.55.120 (2)(b)-(3) provides owners of vehicles impounded by the State Patrol, local police, or private property owners with an expedited means to challenge the impound and associated fees. Under the law, tow operators must give notice of the opportunity for a statutory hearing to individuals seeking to redeem an impounded vehicle, and the person must request a hearing within ten days of such notice. RCW

46.55.120(2)(a). These provisions, however, do not provide the exclusive remedy for victims of unlawful seizures nor divest the courts of jurisdiction over Appellant's common law conversion claim.

The statutory language does not evince any legislative intent to create an exclusive remedy. The legislative history also shows that the statutory hearing was created not to provide an exclusive remedy, but to address constitutional due process requirements imposed by prior court decisions. The hearing procedures include severe limitations on filing deadlines, presentation of evidence, and availability of damages. Thus, it does not provide a full and fair remedy in many instances and cannot reasonably be construed as the sole avenue of relief for injured vehicle owners. The statute also lacks any indicia of the requisite legislative intent to eliminate established common law remedies or strip the superior courts of their jurisdiction over common law claims. In light of these considerations, the Court should hold that the statutory hearing provides only a cumulative, not an exclusive, remedy.

B. Review Of The *Wilmot* Factors Demonstrates That RCW 46.55.120 Does Not Create An Exclusive Remedy.

1. The statutory language is not exclusive and does not convey a clear legislative intent to preclude other remedies.

“[A] statutory remedy does not bar a common law tort claim unless the statutory remedy is mandatory and exclusive.” *Korslund v. Dyncorp Tri-Cities Services*, 121 Wn. App. 295, 321, 88 P.3d 966 (2004), *aff’d in relevant part*, 156 Wn.2d 168, 125 P.3d 119 (2005). Relevant to this inquiry is whether the statute contains a clear expression of legislative intent to preclude other remedies, whether the statutory remedy is certain and comprehensive, and whether the remedy creates new rights or duplicates rights already existing at common law. *Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46, 61-62, 821 P.2d 18 (1991).

The language of RCW 46.55.120(2)(b) provides that a person seeking to redeem an impounded vehicle “has a right to a hearing in the district or municipal court” to contest the validity of the impound or the amount of towing and storage charges. The law similarly requires that a tow operator must notify owners of the “opportunity for a hearing.” RCW 46.55.120(2)(a). Providing a “right” or an “opportunity” to an expedited hearing, however, does not indicate a legislative intent to make that forum the sole and mandatory remedy for unlawful vehicle seizures. “Had the

Legislature intended the statute to be exclusive it would have been very simple to have expressly said so.” *Wilmot*, 118 Wn.2d at 62. Rather, as explained in subsection 2 below, the intent of the statutory hearing was to provide a supplemental remedy required by federal due process requirements, not to preempt all other avenues of redress.

The State Patrol has argued that the absence of language signifying the exclusiveness of the statutory remedy is a technicality. However, the absence of such language goes to the heart of the analysis required by *Wilmot*. Moreover, the Patrol’s reliance on the word “waived” in RCW 46.55.120 (2)(b) is misplaced. That subsection states only that a person waives his right to a statutory hearing by not requesting one within ten days. It does not state or imply that all other rights and remedies are waived as well. Similarly, the statement in subsection (b) that the registered owner is liable for towing, storage and other impound charges in the absence of a hearing means only that the *tow operator* may look to the owner for satisfaction of such charges. It does not state or imply that the *State Patrol or other law enforcement agency* ordering the impound is relieved of liability for damages caused by an unlawful seizure.

In numerous other laws, the legislature has expressly stated that the statutory remedy is exclusive, that common law remedies are abolished, or

that no cause of action may accrue until statutory procedures are exhausted. *E.g.*, RCW 51.04.010 (establishing workers' compensation system as the sole remedy for workplace injuries "to the exclusion of every other remedy ... and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished"); RCW 7.71.030 (providing "exclusive remedy for any action taken by a professional peer review body of health care providers"); RCW 77.36.040 (providing "exclusive remedy for claims against the state for damages caused by wildlife"); RCW 35.21.873 ("no cause of action based upon a dispute arising from [cell phone taxes] shall accrue" until remedies provided by section are exhausted). The absence of such language in RCW 46.55.120 compels the conclusion that the statutory remedy is supplemental, not exclusive.

2. The legislative history of the statute demonstrates the hearing was not intended to provide an exclusive remedy or preempt existing common law rights.

The legislative history demonstrates that the hearing provisions were enacted to respond to court rulings requiring a prompt post-deprivation hearing under the due process clause, not to substitute for or supplant existing common law remedies like conversion claims.

The statutory hearing was first created in 1979 to cover vehicles impounded by order of law enforcement agencies. *See* 1979 Wash. Laws Ch. 178, § 4 (App. A). It was amended in 1983 to cover vehicles impounded from private property. *See* 1983 Wash. Laws Ch. 274, § 4 (App. C). In both cases, the legislative history specifically notes that the statutory remedy was adopted in response to court decisions requiring an opportunity for a prompt post-deprivation hearing as a matter of constitutional right. *See* Analysis as Enacted of 1979 Wash. Laws Ch. 178 and Bill Report on SHB 755 (App. B); Final Bill Report on 1983 Wash. Laws Ch. 274 (App. D); *cf. Stypmann v. San Francisco*, 557 F.2d 1338, 1342-44 (9th Cir. 1977) (due process requires opportunity for prompt post-impound hearing to challenge tow). By contrast, nothing in the bill reports or analyses or the history of later amendments suggests that the statutory hearing was intended to preempt existing common law remedies for unlawful seizures of vehicles.

Significantly, neither the 1979 nor the 1983 laws authorized award of loss-of-use damages at the statutory hearing, yet both laws contained language providing that the right to a hearing is waived and the owner is responsible for the towing and storage fees if a hearing is not requested within the applicable ten day period. App. A, C. As explained in section

3 below, the fact that loss-of-use damages were not available demonstrates that the statutory hearing was not intended and did not act as a full and fair remedy to the exclusion of common law relief. By the same token, the inclusion of the waiver language in these original enactments shows that this language did not signify exclusivity of the statutory remedy either at the time it was created or as it was modified by later amendments.

The legislature adopted technical amendments to the statutory hearing provisions in 1985 and 1987. *See* App. E-F. In 1989, for the first time, the legislature authorized loss-of-use damages of \$50 per day for impounds found unlawful at the hearing. 1989 Wash. Laws Ch. 111, § 11 (App. G). However, the 1989 legislative history is devoid of any indication that this change was meant to elevate the statutory hearing to an exclusive remedy or preempt existing common law rights. *See* Final Bill Report on 1989 Wash. Laws Ch. 111 (App. H). In the absence of any language or other indicia signaling such intent, the addition of this damage allowance alone is not sufficient to convert the statutory hearing, which was enacted solely to satisfy due process requirements, into a shield protecting the State Patrol and others from all other claims for relief from unlawful vehicle seizures.

Finally, the Court should note that the statutory hearing cannot, in fact, eliminate all other causes of action arising from unlawful impounds. In some cases, these seizures will violate Fourth Amendment or other federal constitutional rights and be subject to suit under 28 U.S.C. § 1983. *Cf. Galloway v. City of Albany*, 92 F. Supp.2d 598, 600 (N.D. Miss. 2000) (city liable under § 1983 for emotional distress and other damages from unconstitutional seizure of plaintiff's truck). The Washington legislature knows it cannot abrogate such causes of action under the Supremacy Clause. This Court should not ascribe to the statutory hearing a legislative intent – preemption of all other remedies – that manifestly cannot be met.

3. The statutory hearing does not provide a full or comprehensive remedy because it does not allow all damages available at common law.

In addition to not being mandatory or exclusive, the statutory hearing does not provide a comprehensive remedy, because “it does not clearly authorize all damages which would be available in a tort action.” *Wilmot*, 118 Wn.2d at 61 (statutory remedy for retaliatory discharge not exclusive where it does not include all damages recoverable in tort, like emotional distress); *see also Wilson v. City of Monroe*, 88 Wn. App. 113, 125-26, 943 P.2d 1134 (1997) (statutory remedy not exclusive where it did not clearly allow recovery of general damages). The monetary relief

available under RCW 46.55.120 falls short of providing just compensation to victims of unlawful impounds in several respects.

First, the statute does not provide compensation for loss of a vehicle by auction following impound (as happened to both of Appellant's vehicles), even though the vehicle may be sold while the impound appeal is working its way through the legal system. An owner of an impounded vehicle can forestall an auction by redeeming the vehicle or by paying a security deposit of one half the towing and storage fees for the entire period of impound, which can last up to 90 days. RCW 46.55.120 (1)(b). But this does not help those who lack sufficient resources to pay such fees. This is not a hypothetical concern. The vast majority of DWLS drivers have their licenses suspended for failure to pay a traffic ticket. Drivers who cannot afford a traffic fine also will have problems finding the hundreds of dollars necessary to pay towing and storage charges to redeem or secure impounded vehicles. The result is that the statutory hearing is least likely to provide an adequate remedy to those who are most financially vulnerable and most in need of comprehensive relief.

Second, the government may not be liable for loss of use damages under RCW 46.55.120(3)(e) if the impounding officer relied on Department of Licensing ("DOL") records to determine that the driver had

a suspended license, even if the impound is invalid for an entirely unrelated reason, like the officer's failure to exercise reasonable discretion. *See Becerra v. City of Warden*, 117 Wn. App. 510, 521, 71 P.3d 226 (2003) (statutory loss of use damages precluded by good faith exception even if impound was unlawful because local ordinance precluded arresting officer from exercising discretion).¹ The State Patrol has dismissed this as a narrow exception but the facts of *Becerra* and this case prove otherwise. The State Patrol impounded thousands of vehicles under its mandatory impound policy in violation of its statutory authority. Yet under RCW 46.55.120(3)(e) and *Becerra*, none of the owners of those vehicles would be entitled to loss of use damages in a statutory hearing if DOL records indicated that the driver's license was suspended at the time of impound.

Third, other damages are available at common law that are not allowed under the statutory hearing at all. For example, in a conversion action, an owner can recover damages for any harm to the vehicle during towing or storage. *State v. Ratliff*, 46 Wn. App. 325, 328-29, 730 P.2d 716 (1986); *Flexi-Van Leasing, Inc. v. Avondale Container Yard*, 2000 U.S. Dist. LEXIS 16598 (E.D. La. 2000); *White Motor Credit Corp. v. Sapp*

¹ The *Becerra* court also noted that the owner in that case did not file an action for damages, suggesting that RCW 46.55.120 does not provide the exclusive avenue of relief

Bros. Truck Plaza, Inc., 249 N.W.2d 489, 494 (Neb. 1977); Restatement (Second) of Torts § 922 cmt. b. Compensation for lost commercial opportunities, like the inability to consummate sale of an impounded vehicle, also can be obtained. Restatement (Second) of Torts § 927 cmt. m, § 931 cmt. e.

In some cases, damages for inconvenience and mental anguish caused by the wrongful seizure also may be recovered, either through a conversion action or associated infliction of emotional distress claim. Although this Court has stated that such damages ordinarily are not available in a conversion action absent malice or other aggravating factors, *Phillips v. Cordes Towing Svc., Inc.*, 50 Wn.2d 545, 313 P.2d 377 (1957), it also has stated that this rule is not hard and fast, *Murphy v. City of Tacoma*, 60 Wn.2d 603, 621-22, 374 P.2d 976 (1962). Other jurisdictions allow mental distress damages in conversion actions in appropriate circumstances. *E.g.*, *Fredeen v. Stride*, 525 P.2d 166, 168 (Ore. 1974); *Hyde v. Southern Grocery Stores*, 15 S.E.2d 353 (S.C. 1941); *Wright v. Husband*, 99 S.W.2d 583 (Ark. 1936) (allowing recovery for mental anguish from wrongful attachment of automobile); *Dozier v. Dean Richard Enterprises, Inc.*, 772 So.2d 322, 325 (La. App. 2000) (damages

for an unlawful impound. *Id.* at 523.

for inconvenience and aggravation from conversion of ATV); Restatement (Second) of Torts § 927 cmt. m. Washington common law also may allow such recovery under circumstances that could well occur with an unreasonable DWLS impound, for example, where a driver or passengers (including children) are left without transport in a remote, unsafe, or unusually distressing situation. *See* Restatement (Second) of Torts § 927 cmt. m (“one whose automobile is destroyed and who is consequently required to walk to a nearby town may be entitled to recover for loss of time and harm that proximately results”).

None of the foregoing damages are available through the statutory hearing. Thus, it cannot reasonably be construed as a comprehensive remedy to the exclusion of existing common law claims for relief.

4. Procedural limitations dictate that the statutory remedy is not certain or exclusive.

Numerous factors suggest that the statutory hearing does not provide a *certain* remedy in all circumstances. *Wilmot*, 118 Wn.2d at 59. For example, at least one district court expressly disavowed the ability of owners to challenge DWLS impounds through the statutory hearing procedure. CP 207-08. The record in this case does not establish whether other district or municipal courts around the State took a similar position,

but this indicates that the statutory remedy is not available or consistent with due process requirements in all instances.

As important, the statutory hearing incorporates many procedural limitations that suggest it is not an exclusive remedy and that would raise substantial due process and other constitutional concerns if it were so construed. For example, there is no right to a jury. *See Wilson*, 88 Wn. App. at 126 (lack of entitlement to a jury for the statutory claim suggests the statutory remedy is not intended to be exclusive).

Second, the impounding officer does not have to appear in court for cross-examination and assessment of his credibility, but can testify via written report. RCW 46.55.120(3)(b). Since the validity of an impound can turn on whether the officer adequately considered reasonable alternatives, a fact that may be fully explored only through cross-examination of the officer, this limitation indicates that the hearing was not designed to be the sole remedy for wrongful seizures. Although the State Patrol argues that the statutory remedy is fair and adequate, that conclusion cannot be sustained when there is no opportunity to question a crucial witness on central issues dispositive of the lawfulness of the seizure.

Third, the extremely short limitations period for requesting a hearing suggests it is not the exclusive remedy. Numerous circumstances may prevent the owner of a wrongfully impounded vehicle from gathering essential evidence, conducting important discovery, or even requesting a hearing within the allotted ten-day period. In some cases, when the vehicle is impounded while driven by someone other than the owner, the owner may be away and not receive notice of the impound until after the ten days has passed. In other cases, the owner may be incarcerated and unable to request a hearing during this period. Merely identifying and getting to the proper court to request a hearing during normal court hours may prove a significant challenge to owners who work full time and have now been deprived of their vehicles. Yet the statute makes no exception for these circumstances or other compelling causes for missing the ten-day window. If interpreted as the sole remedy for wrongful seizure of vehicles, the ten-day limitations period of RCW 46.55.120 would raise significant concerns regarding due process and the constitutional right of access to the courts. *Cf. Hunter v. North Mason School Dist.*, 85 Wn.2d 810, 812-14, 539 P.2d 845 (1975) (discussing due process and other constitutional concerns with “short” 120-day period for filing tort claims against political subdivisions).

5. RCW 46.55.120 does not create any new rights and therefore is cumulative of common law rights and remedies, rather than exclusive.

The statutory remedy in this case is “cumulative rather than exclusive” because it does not create new substantive rights, but merely overlaps rights extant at common law. *Wilmot*, 118 Wn.2d at 63. The hearing provided by RCW 46.55.120 creates a specific mechanism to challenge an impound, but does not create new substantive rights. Common law remedies such as conversion or replevin to obtain damages or the return of a wrongly impounded vehicle existed prior to and separate from the statutory remedy. *E.g.*, *Boss v. City of Spokane*, 63 Wn.2d 305, 387 P.2d 67 (1963). Statutes should not be read to strip citizens of common law rights or remedies absent an unambiguous expression of legislative intent. *State v. Crider*, 78 Wn. App. 849, 856, 899 P.2d 24 (1995); *Matthews v. Elk Pioneer Days*, 64 Wn. App. 433, 437, 824 P.2d 541 (1992) (statutes in derogation of common law rules of liability are “strictly construed and no intent to change that law will be found unless it appears with clarity”). This Court and the Courts of Appeals have often applied these principles to conclude that statutory remedies do not supplant pre-existing, overlapping common law causes of action.

For example, in *Van Blaricom v. Kronenberg*, 112 Wn. App. 501, 512, 50 P.3d 266 (2002), the court held that the post-seizure hearing provided under the attachment statute, RCW 6.25.070(3), did not preclude other causes of action to recover damages for wrongful attachment. The court reached this conclusion even though RCW 6.25.100 provides that actual damages for wrongful attachment can be obtained through the statutory hearing and even though the plaintiffs actually requested, received, and prevailed at a statutory hearing. *Id.* at 506, 512.

In *Flannery v. Bishop*, 81 Wn.2d 696, 702, 504 P.2d 778 (1972), this Court held that a statute creating a right to recovery of usurious interest with a two year statute of limitations did not provide the exclusive remedy for debtors where a well-established common law remedy existed prior to the statute and “the legislature failed to clearly state that the common-law remedy and its 3-year limitation period is abolished.” The Court explained:

...Courts, do not, however, favor repeals of settled principles by implication, and the legislature in the enactment of a statute will not be presumed to intend to overturn long-established legal principles, unless such intention is made clearly to appear by express declarations or by necessary implication. To the contrary, the legislature will be presumed not to intend to overturn long-established principles of law, and the statute will be so construed, unless an intention to do so plainly appears by express declaration or necessary or unmistakable implication, and

the language employed admits of no other reasonable construction.

Id. at 701 (quoting *Ashenbrenner v. Department of Labor & Indus.*, 62 Wn.2d 22, 26, 380 P.2d 730 (1963)). The Court reached the same conclusion in *Berger v. Sonneland*, 144 Wn.2d 91, 104-05, 26 P.3d 257 (2001), where it held that the civil suit provision of the Uniform Health Care Information Act, RCW 70.02.170, and its two year limitations period did not provide the exclusive remedy for a physician's unauthorized disclosure of a patient's confidential information and did not bar plaintiff's common law action filed more than two years after the unauthorized disclosure. *See also Burke Motor Co. v. Lillie*, 39 Wn.2d 918, 921, 239 P.2d 854 (1952) (summary statutory remedy against bond sureties does not preclude independent common law claim against sureties; the statute "does not abolish the common-law right of recovery ... but merely gives an additional right to summary judgment in the principal action."). The same principles apply here, where there is no clear expression of intent to eliminate existing common law remedies in RCW 46.55.120.²

² These principles have been recognized and applied by numerous other jurisdictions. *E.g., Collard v. Hohnstein*, 174 P. 596 (Colo. 1918) (statute providing for hearing to determine exemption of property from attachment does not create exclusive remedy or preclude common law claims for wrongful attachment); *Cork v. Applebee's of Michigan, Inc.*, 608 N.W.2d 62, 65 (Mich. App. 2000) (exclusive remedies provision of state wage law did not bar conjoined common law claims; "where a plaintiff seeks enforcement of a common-law right, such as a breach of contract claim, the statutory remedy is

The fact that the statutory hearing is designed to provide a quick and efficient means of redress in some cases does not change this conclusion. To the contrary, courts have recognized that summary remedies, because of their nature, should be presumed to be cumulative of existing common law remedies, rather than exclusive. For example, in *Leach v. Rich*, 196 S.W. 138 (Tenn. 1917), the Court held that a statutory remedy providing for summary execution on replevin bonds or return of the property replevied did not preclude common law actions for damages for unlawful detention of the property. The Court explained, “Summary remedies, being in contravention of the common law, are generally held to be cumulative in the absence of language showing that they are intended to be exclusive.” *Id.* at 140. That principle carries particular weight in this case, where a claimant’s ability to prove that an impound was unlawful may depend on a greater evidentiary showing and exploration of the facts than provided for under RCW 46.55.120.

Similarly, in *Moreno v. City of New York*, 508 N.E.2d 645 (N.Y. 1987), the Court held that the statutory procedure for recovery of items

cumulative, not exclusive”); *Hentzel v. Singer Co.*, 188 Cal. Rptr. 159, 166 (Cal.App.1982) (statute providing remedy for retaliatory discharge did not preclude common law action for wrongful termination; “[if] a right was established at common law or by statute before the new statutory remedy was created, the statutory remedy is usually regarded as merely cumulative, and the older remedy may be pursued at the plaintiff’s election”).

seized by police in connection with a criminal investigation was not exclusive and did not bar a common law replevin action against the City. The ordinance in that case provided a 90 day period following the dismissal of criminal charges in which the owner of seized property could request return of the property and further provided “that property seized by the police ‘that shall remain in the custody of the property clerk for a period of three months without a lawful claimant entitled thereto *shall*, in the case of moneys, be paid into the [Police Pension Fund].’” *Id.* at 646 (quoting NYC Admin. Code § 435-4.0[e]) (emphasis added)). This statutory remedy was enacted in response to an earlier federal court ruling, *McClendon v. Rosetti*, 460 F. 2d 111 (2nd Cir. 1972), holding that the City’s prior practice of requiring owners to file suit to recover seized property violated their due process rights. *Moreno*, 508 N.E.2d at 646.

The parallels between this case and *Moreno* are striking. Like the procedure set forth in RCW 46.55.120, the ordinance in *Moreno* establishes a prompt remedy for owners of property seized by the government. Like the procedure set forth in RCW 46.55.120, the ordinance in *Moreno* allows the government’s agents to treat the property as abandoned and dispose of it if no claim is filed within the statutory time frame. Like the procedure set forth in RCW 46.55.120, the ordinance in

Moreno is responsive to federal due process requirements regarding protection of property-owners' rights. And like the ordinance in *Moreno*, RCW 46.55.120 should not be interpreted to extinguish the pre-existing common law rights and remedies of owners of unlawfully seized vehicles.

The State Patrol's fear that allowing common law conversion claims would encourage vehicle owners to sit on their rights and disregard the statutory remedy in order to increase their damages is overstated and contrary to common sense. Bringing a conversion claim in superior court is more expensive and time consuming than the statutory hearing and provides no sure result. No reasonable vehicle owner who possesses the financial and other resources to request and attend a hearing and to redeem or post a security deposit for his vehicle in the interim would deliberately choose to ignore this option just so he can later bring a conversion claim. Rather, the preservation of common law remedies is necessary to protect the rights of those who lack the resources or ability to pursue a statutory hearing in the extremely short time-frame required by RCW 46.55.120 or for whom the evidentiary limitations and restricted damages incorporated under the statute do not provide full and adequate relief.

Similarly, the argument in the State Patrol's motion that it "relies" on the absence of statutory hearing requests begs the question of what

form such reliance takes. For one thing, the State Patrol does not deny that vehicles can be and are auctioned while the statutory appeal process proceeds unless the owner can pay the necessary security deposit. Therefore, the mere filing of a statutory hearing request does not ensure that unlawfully impounded vehicles will be released or that the agency will be relieved of financial liability for vehicles that are auctioned. In addition, as explained in section B.1, *supra*, the statute merely allows the *towing company* to look to the registered owner for payment of impound fees in the absence of a successful statutory appeal; it contains no language relieving the law enforcement agency of liability for special or general damages caused by an unlawful impound. Most fundamentally, the lack of a challenge under the statute does not alter the legality of the impound itself. The absence of a hearing does not establish the lawfulness of the seizure, and the State Patrol cannot reasonably conclude otherwise.

As noted above, the need for a prompt post-deprivation hearing arises from constitutional due process requirements. App. B & D; *Stypmann*, 557 F.2d at 1342-44. The State Patrol now seeks to twist this provision from a protection for the victims of wrongful government seizures to a safe harbor for agencies that have acted outside their lawful authority. There is no basis in the language or legislative history of RCW

46.55.120 that supports this inversion. The Court should reject the State Patrol's effort to turn this shield for injured property owners into a sword to cut off their rights to redress.

C. RCW 46.55.120 Does Not Divest The Superior Courts Of Their Jurisdiction Over Common Law Claims For Redress.

The Washington Constitution vests the superior courts with original jurisdiction over all cases and proceedings in which jurisdiction is not vested by law exclusively in some other court. Wash. Const. Art. IV, § 6. Although the legislature may extend limited jurisdiction to adjudicate certain issues, the superior court retains concurrent jurisdiction over those subjects unless the legislative grant of jurisdiction is exclusive. *Ledgerwood v. Landsdowne*, 120 Wn. App. 414, 419, 85 P.3d 950 (2004) (citing *Young v. Clark*, 149 Wn.2d 130, 133-134, 65 P.3d 1192 (2003)). Legislative enactments purporting to limit the superior court's original jurisdiction are narrowly construed. *Id.* at 419-420. A statute that does not confer exclusive jurisdiction by its plain language is merely a legislative grant of jurisdiction. *Id.* at 420.

Because the Washington State Constitution confers such a broad grant of jurisdiction on the superior courts, exceptions to that jurisdictional grant will be narrowly read. *Orwick v. Seattle*, 103 Wn.2d 249, 251, 692 P.2d 793 (1984). If a Legislature has shown no indication of its intention to limit jurisdiction, an act should be construed as imposing no limitation.

Burnside v. Simpson Paper Co., 66 Wn. App. 510, 517, 832 P.2d 537 (1992), *aff'd*, 123 Wn.2d 93, 864 P.2d 937 (1994); *see also In re Marriage of Major*, 71 Wn. App. 531, 534, 859 P.2d 1262 (1993) (“courts may only find a lack of jurisdiction under compelling circumstances, such as when it is explicitly limited by the Legislature or Congress”).

RCW 46.55.120 merely authorizes district and municipal courts to hear cases relating to vehicle impoundments within the scope of the statute. Nowhere does the statute confer *exclusive* jurisdiction on district and municipal courts over the subject matter of unlawful impounds. The statute *allows* those courts to hold post-impound hearings, but does not *require* that every claim arising from unlawful impounds be heard in those courts. The superior courts retain jurisdiction over the subject of DWLS impounds and are not prevented from entertaining common law claims relating to such seizures.

This case is similar in many respects to *Orwick v. Seattle*, 103 Wn.2d 249, 692 P.2d 793 (1984), where the plaintiffs challenged “system-wide violations” of the statute governing traffic infractions by the Seattle Municipal Court and Seattle Police Department, including “use of inaccurate radar equipment by inadequately trained officers.” *Id.* at 250, 252. While recognizing that “the municipal court has exclusive original

jurisdiction over the admissibility of evidence in a contested hearing of a traffic citation,” the Court held that the superior court had jurisdiction over these allegations of systemic violations of statutory and constitutional requirements. *Id.* at 252. In the same way, the delegation of jurisdiction in RCW 46.55.120 to district and municipal courts to entertain post-deprivation hearings does not undermine the jurisdiction of the superior court in this case to entertain common law and constitutional challenges arising out of the systemic policies and practices of the State Patrol.³

III. CONCLUSION


For the reasons stated above, the Court should deny the State Patrol’s Motion for Reconsideration. The language and history of RCW 46.55.120 evince no legislative intent to make the statutory hearing an exclusive remedy, to abrogate existing common law rights and remedies, or to strip the superior courts of their original jurisdiction over common law claims relating to unlawful vehicle seizures. The extremely short time period for filing statutory appeals, the critical evidentiary limitations in such hearings, and the limited damages available also dictate that the statutory hearing does not provide a full and fair remedy in all cases. The

³ Plaintiff asserted a claim for relief under Washington Constitution Art. I, § 7 in this case, but the trial court dismissed this cause of action under CR 12(b)(6) because plaintiff’s conversion claim provided an adequate alternative remedy. *See* Motion for Reconsideration, App. B at 26.

State Patrol asks the Court to turn the purpose of the statute on its head, by converting a procedure intended to provide supplemental protection for injured property owners into a screen for government overreaching. The Court should reject this request.

RESPECTFULLY SUBMITTED this ____ day of April, 2008.

SCHROETER, GOLDMARK & BENDER


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(206) 622-8000

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARK POTTER, on behalf of himself and
the class he represents,

Petitioner-Appellant,

v.

WASHINGTON STATE PATROL, a
Washington State Agency,

Respondent.

No. 79172-4

CERTIFICATE OF SERVICE

I certify that I served **APPELLANT'S SUPPLEMENTAL BRIEF IN RESPONSE TO
RESPONDENT'S MOTION FOR RECONSIDERATION** on April 4, 2008, by arranging
delivery by the method designated below, to the addresses of counsel, as listed below:

VIA LEGAL MESSENGER FOR DELIVERY ON APRIL 4, 2008

Shannon Inglis, AAG
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188

DATED this 3rd day of April, 2008.



Mary Froelich
Paralegal

APPENDIX A

Even though the employee meets the burden of proving the conditions specified in section 2 of this act, the employee shall, at the time of employment or thereafter, disclose all inventions being developed by the employee, for the purpose of determining employer or employee rights. The employer or the employee may disclose such inventions to the Department of Employment Security, and the department shall maintain a record of such disclosures for a minimum period of five years.

Passed the House April 27, 1979.

Passed the Senate April 24, 1979.

Approved by the Governor May 14, 1979.

Filed in Office of Secretary of State May 14, 1979.

CHAPTER 178

[Substitute House Bill No. 755]

ABANDONED VEHICLES—REMOVAL, STORAGE, DISPOSAL

AN ACT Relating to motor vehicles; amending section 3, chapter 42, Laws of 1969 ex. sess. and RCW 46.52.102; amending section 39, chapter 281, Laws of 1969 ex. sess. as amended by section 164, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.104; amending section 4, chapter 42, Laws of 1969 ex. sess. as amended by section 40, chapter 281, Laws of 1969 ex. sess. and RCW 46.52.106; amending section 5, chapter 42, Laws of 1969 ex. sess. as last amended by section 165, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.108; amending section 46.52.110, chapter 12, Laws of 1961 as last amended by section 166, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.110; amending section 7, chapter 42, Laws of 1969 ex. sess. as last amended by section 167, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.111; amending section 8, chapter 42, Laws of 1969 ex. sess. as last amended by section 168, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.112; amending section 9, chapter 42, Laws of 1969 ex. sess. as amended by section 169, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.113; amending section 10, chapter 42, Laws of 1969 ex. sess. and RCW 46.52.114; amending section 2, chapter 42, Laws of 1969 ex. sess. as last amended by section 170, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.115; amending section 11, chapter 42, Laws of 1969 ex. sess. as amended by section 171, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.116; amending section 1, chapter 11, Laws of 1971 ex. sess. and RCW 46.52.145; amending section 2, chapter 11, Laws of 1971 ex. sess. as amended by section 174, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.150; amending section 64, chapter 155, Laws of 1965 ex. sess. as amended by section 2, chapter 24, Laws of 1977 and RCW 46.61.560; amending section 65, chapter 155, Laws of 1965 ex. sess. as amended by section 4, chapter 167, Laws of 1977 ex. sess. and RCW 46.61.565; amending section 5, chapter 167, Laws of 1977 ex. sess. and RCW 46.61.567; adding new sections to chapter 46.52 RCW, adding a new section to chapter 46.61 RCW; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 46.61 RCW and codified within the subchapter "Stopping, Standing, and Parking" a new section to read as follows:

It is unlawful for the operator of a vehicle to leave the vehicle unattended within the limits of any highway unless the operator of the vehicle arranges for the prompt removal of the vehicle.

[1640]

NEW SECTION. Sec. 2. There is added to chapter 46.52 RCW a new section to read as follows:

A law enforcement officer discovering an apparently abandoned vehicle or abandoned vehicle hulk shall attach to the vehicle a readily visible notification sticker. The sticker shall contain the following information:

- (1) The date and time the sticker was attached;
- (2) The identity of the officer;
- (3) A statement that if the vehicle is not removed within twenty-four hours from the time the sticker is attached, the vehicle may be taken into custody and stored at the owner's expense; and
- (4) The address and telephone number where additional information may be obtained.

If the vehicle has current Washington registration plates, the officer shall check the records to learn the identity of the last owner of record. The officer or his department shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the notification sticker.

NEW SECTION. Sec. 3. There is added to chapter 46.52 RCW a new section to read as follows:

If the vehicle or hulk is not removed within twenty-four hours from the time the notification sticker is attached, the law enforcement officer may take custody of the vehicle or hulk and provide for the vehicle or hulk's removal to a place of safety.

For the purposes of this section a place of safety includes the business location of a registered disposer.

NEW SECTION. Sec. 4. There is added to chapter 46.52 RCW a new section to read as follows:

(1) When a vehicle or hulk is impounded pursuant to RCW 46.61.565 or section 3 of this 1979 act, the governmental agency at whose direction the impoundment was effected shall, within twenty-four hours after the impoundment, mail notification of the impoundment to the last registered owner and the legal owner of the vehicle as shown on the records of the department or as otherwise reasonably ascertainable. The notification shall contain a certificate of mailing and shall inform the registered owner of the impoundment, redemption procedures, and opportunity for a hearing to contest the basis for the impoundment. The notice need not be mailed if the vehicle is redeemed prior to the mailing of the notice or if the registered owner and the legal owner are not reasonably ascertainable.

Upon impoundment of a vehicle pursuant to this section, the law enforcement officer shall also provide the registered disposer with the name and address of the last registered owner and legal owner of the vehicle as may be shown by the records of the department or as otherwise reasonably ascertainable.

[1641]

(2) The notification provided for in this section shall inform the registered owner that any hearing request shall be directed to the district court for the justice court district in which the vehicle was impounded and shall be accompanied by a form to be utilized for the purpose of requesting a hearing. Any request for a hearing pursuant to this section shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the notification provided for in this section was mailed. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the registered owner shall be liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3) If the registered owner timely requests a hearing provided for by this section and prevails at the hearing, the unit of government under whose jurisdiction the impoundment was effected shall be liable for any towing, storage, or other impoundment charges permitted under this chapter.

(4) Removal and storage of a vehicle or hulk under sections 2 through 4 of this 1979 act or under RCW 46.61.565 shall be at the owner's expense, except as provided in RCW 46.52.104, 46.52.106, and subsection (3) of this section.

(5) The department may adopt rules providing that the owner's vehicle license will not be renewed or a new vehicle license issued to the owner unless any outstanding removal and storage charges are paid.

NEW SECTION. Sec. 5. There is added to chapter 46.52 RCW a new section to read as follows:

When a vehicle or hulk is impounded pursuant to sections 2 through 4 of this 1979 act or RCW 46.61.565 and the registered owner has made a timely request for a hearing, the registered owner may regain possession of the vehicle pending the outcome of the hearing by posting a sufficient cash bond to be held in trust by the registered disposer or such other security as the department may by rule require.

NEW SECTION. Sec. 6. There is added to chapter 46.52 RCW a new section to read as follows:

(1) Any person shall be guilty of a misdemeanor who:

(a) Conducts or attempts to conduct a sale of or sells an abandoned vehicle or abandoned vehicle hulk pursuant to RCW 46.52.111 and 46.52.112 without being properly registered as a registered abandoned vehicle disposer; or

(b) Removes a vehicle from private property pursuant to law and fails to notify the appropriate law enforcement agency of such removal.

(2) Any person who knowingly makes a false statement in any document prepared in connection with the disposition of an abandoned vehicle or

abandoned vehicle hulk pursuant to this chapter shall be guilty of a gross misdemeanor.

Sec. 7. Section 3, chapter 42, Laws of 1969 ex. sess. and RCW 46.52.102 are each amended to read as follows:

(1) An "abandoned vehicle" for the purposes of this chapter shall mean any vehicle left within the limits of any highway or upon the property of another without the consent of the owner of such property for a period of twenty-four hours or longer, except that a vehicle shall not be considered abandoned if its owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance.

(2) An "abandoned ((automotive)) vehicle hulk" for the purposes of this chapter shall mean the abandoned remnant or remains of a motor vehicle which is inoperative and cannot be made mechanically operative without the addition of vital parts or mechanisms and the application of a substantial amount of labor to effect repairs.

(3) A "registered abandoned vehicle disposer" or a "registered disposer" means any currently licensed tow truck operator, garage keeper, or other person engaged in the business of removing, storing, or disposing of vehicles, abandoned vehicles, or abandoned vehicle hulks, including vehicles or hulks removed pursuant to RCW 46.61.565 and section 3 of this 1979 act, and who is properly registered and licensed pursuant to RCW 46.52.108 as now or hereafter amended.

Sec. 8. Section 39, chapter 281, Laws of 1969 ex. sess. as amended by section 164, chapter ... (House Bill No. 849), Laws of 1979 and RCW 46.52.104 are each amended to read as follows:

A registered owner transferring a motor vehicle shall be relieved from personal liability under RCW 46.52.106, 46.52.111, 46.52.112 ((and)), 46.52.117, and section 4 of this 1979 act if within five days of the transfer he transmits to the department of licensing, on a form prescribed by the director of licensing, notice that he has transferred his interest in the vehicle, the name of the transferee, and the date on which the transaction was made.

Sec. 9. Section 4, chapter 42, Laws of 1969 ex. sess. as amended by section 40, chapter 281, Laws of 1969 ex. sess. and RCW 46.52.106 are each amended to read as follows:

((The abandonment of)) When any vehicle or ((automotive)) hulk ((shall constitute)) is left on the highway such that the vehicle or hulk may be removed under sections 2 through 4 of this 1979 act or RCW 46.61.565 there is a prima facie presumption that the last owner of record is responsible for such ((abandonment)) action and thus liable for any costs incurred in removing, storing and disposing of such ((motor)) vehicle or ((automotive)) hulk. A registered owner who has complied with the requirements of

APPENDIX B

SHB 755

SPONSORS: Committee on Transportation
(Originally Sponsored by Representatives Charnley, Wilson,
Burns, Garrett, Sherman and Bender)

COMMITTEE: Transportation

Providing for rights, duties, and penalties when a vehicle is left
on the highway.

ANALYSIS AS ENACTED

ISSUE:

Recent lower court decisions have necessitated a change in
existing laws regarding the impoundment of vehicles left
unattended on public roadways.

SUMMARY:

The duty of a vehicle operator to promptly remove a vehicle left
on the highway is set forth. Law enforcement officers are
authorized to remove vehicles from the highway where the vehicle
constitutes a hazard or is abandoned. An abandoned vehicle is
defined as one which has been left unattended for 24 hours or
longer.

Procedures are established for removal of vehicles, notification
of owners, the opportunity of a hearing, and redemption of a
vehicle or posting of bond.

A registered disposer is defined and provisions are made for the
regulation of registered disposers by the Department of Licensing.
Provisions of existing law relating to the processing of abandoned
vehicles are amended. The time in which notice of impoundment
must be given to the registered owner is reduced from five to
three days. It is a misdemeanor to sell an abandoned vehicle
without being properly registered as a vehicle disposer. It is a
misdemeanor to remove a vehicle from private property without
notifying appropriate law enforcement agencies. It is a gross
misdemeanor to make any false statement in any document prepared
in connection with the disposition of an abandoned vehicle or
hulk.

This bill contains an emergency clause.

House:	94	1	Effective: May 14, 1979
Senate: (a)	44	0	C 178 L 79 1st ex. sess.
H. Concur:	96	0	

BILL REPORT
(As Passed by Committee)

Bill No.

H.B. 755

HOUSE OF REPRESENTATIVES
Olympia, Washington

| | Original

Companion Measure

| | Amended

No.

☒ Substitute

March 28, 1979

Date

Abandoned vehicles, highways

Brief Title (From Status of Bills)

Reps. Charnley, Wilson and Burns

Sponsor (Note if Agency, Committee, Agency or Executive Request)

Steve Rosen (3-0345)

Staff Contact
(Name & Phone No.)

Reported by Committee on Transportation

Fiscal Impact:

☒ Yes (see fiscal note)

☐ No

Committee Recommendation: Roll Call vote: Y 17, N 0
(If a Minority Report is filed, list last names below)

Majority Report Signed By: _____

Minority Report Signed By: _____

ISSUE:

Vehicles left unattended on public highways constitute potential or actual hazards to the public. Recent court decisions necessitate revisions of state laws relating to the removal of vehicles from the highways.

SUMMARY OF SUBSTITUTE BILL

Sets forth the duty of a vehicle operator to promptly remove a vehicle left on the highway. Authorizes law enforcement officers to remove vehicles from the highway where the vehicle constitutes a hazard, or is abandoned. Sets forth procedure for removal of vehicles, giving of notice and opportunity for hearing to vehicle owner, and redemption of vehicle by owner on posting of bond. Defines "registered disposer" and provides for regulation of registered disposers by Department of Licensing. Amends provisions of existing law relating to processing of abandoned vehicles, including reducing time in which notice must be sent to registered and legal owners from five to three days. Grants rule-making authority to Director of Department of Licensing. Declares an emergency. (See attached section-by-section digest.)

ARGUMENTS PRESENTED FOR:

ARGUMENTS PRESENTED AGAINST:

Persons leaving vehicles unattended on public highways should be responsible for removing them. Law enforcement officers need a reliable procedure for removing vehicles. The state's laws need to be revised to conform to constitutional requirements established by the courts in this area.

PRINCIPAL PROPONENTS:

PRINCIPAL OPPONENTS:

Citizens' Advisory Committee on Highway Safety

Washington Tow-Truck Association

Department of Licensing

Washington State Patrol

APPENDIX C

(a) File with the department a detailed schedule of all fees charged incident to the removal and storage of vehicles pursuant to RCW 46.52.119 or 46.52.1192;

(b) Post a copy of the schedule of fees on file with the department in a prominent place at the business location where vehicles are released from storage;

(c) Maintain personnel able and authorized to arrange for the release of any vehicle to its owner on a twenty-four hour basis;

(d) After removing a vehicle from private property pursuant to RCW 46.52.118, 46.52.119, or 46.52.1192, report the fact of removal together with the license number, vehicle identification number, make, year, and place of impoundment to the law enforcement agency with jurisdiction over the place of impoundment, which agency shall maintain a log of such reports ~~(-PROVIDED, That)~~. The law enforcement agency to which the report was made shall provide the name and address of the registered and legal owner, as may appear on the records of the department, to the towing firm removing a vehicle under RCW 46.52.118 through 46.52.1198. The reporting required in this subsection shall include an immediate radio or telephone call to, and a written notification, within twenty-four hours, to such local law enforcement agency;

(e) If any vehicle removed pursuant to RCW 46.52.118, 46.52.119, or 46.52.1192 remains unclaimed after twenty-four hours, send to the registered and legal owner of the vehicle by the end of the next business day a notice by certified mail, return receipt requested ~~((:))~~: (i) Advising that person of the name, location, and twenty-four hour telephone number of the person, tow truck operator, or operator of any storage facility who is empowered or authorized to return custody of any such towed, removed, or impounded motor vehicle ~~(-The notification shall also contain)~~; (ii) providing an estimate of the costs of towing, storage, or other services rendered during the course of removing, impounding, or storing any such motor vehicle ~~(-For the purpose of sending such notice, the law enforcement agency to which the report was made shall provide the name and address of the registered owner, as it appears on the records of the department, to the towing firm removing a vehicle under the provisions of RCW 46.52.118 through 46.52.1198-PROVIDED, That in the event)~~; (iii) containing notice of right of redemption and opportunity for a hearing conducted pursuant to section 4 of this act; and (iv) announcing that the vehicle will be sold at public auction pursuant to RCW 46.52.112 if not reclaimed within fifteen days of mailing of this notice.

(2) If such certified letter has been refused or returned to the sender unclaimed, the notification to the law enforcement agency as provided in subsection (1)(d) of this section shall constitute actual notice to the registered and legal owner ~~(-PROVIDED FURTHER, That)~~.

(3) The towing company shall give to each person who seeks to redeem an impounded vehicle written notice of right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, and a copy of the tow and storage receipt. The towing company shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(4) The effect of other laws notwithstanding, the costs of towing, storage, or other services rendered during the course of removing, impounding, or storing any such motor vehicle shall not constitute a lien upon the legal ownership of ~~((such))~~ the motor vehicle until forty-eight hours after the notice as provided in this ~~((subsection))~~ section has been received by the local law enforcement agency or owner of the vehicle, at which time the lien may be enforced as otherwise provided by law for the enforcement of towing or storage liens or liens generally ~~(-AND PROVIDED FURTHER, That)~~.

(5) If the towing firm assesses a fee according to the miles a vehicle is towed, the lien shall be, and the towing firm shall attempt to recover, no more than the fees that would accrue for towing to the nearest storage location of any towing firm.

~~((?))~~ (6) A failure to comply with the provisions of this section or section 4 of this act in regard to any vehicle waives the lien on that vehicle, constitutes a bar to recovery of the charges accrued on that vehicle, and is grounds for the suspension or revocation of the registration of any towing firm registered under RCW 46.52.108 to dispose of the abandoned vehicle ~~(-PROVIDED, That)~~. However, no storage charges ~~((that))~~ accrue in any event until written notice as provided in this section ~~((that have))~~ has been received by the local law enforcement agency or owner of the vehicle.

NEW SECTION. Sec. 4. There is added to chapter 46.52 RCW a new section to read as follows:

(1) Unclaimed vehicles impounded by registered disposers pursuant to RCW 46.52.118, 46.52.119, or 46.52.1192 shall be redeemed only under the following circumstances:

(a) Only the registered owner, a person authorized by the registered owner, or one who has purchased a vehicle from the registered owner, who produces proof of ownership or written authorization and signs a receipt therefor, or the legal owner, may redeem an impounded vehicle.

(b) An unclaimed vehicle subject to sale may be redeemed pursuant to RCW 46.52.1196, or by posting a sufficient bond to cover accrued impoundment, towing, and storage charges. The bond shall be held in trust by the registered disposer pending the outcome of a hearing.

(2) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in

which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the notification provided for in RCW 46.52.1194 was mailed or delivered. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the legal and registered owners shall be liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The district court, within five days after the request for a hearing, shall notify the registered disposer and the registered and legal owner of the motor vehicle in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment, towing, or storage fees charged were proper.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs and the expenses of the hearing shall be assessed against the person or persons requesting the hearing.

(e) If the impoundment is determined to be invalid, then the registered and legal owners of the vehicle shall bear no impoundment, towing, or storage costs, and any bond or other security shall be returned or discharged as appropriate.

(4) Any unclaimed vehicle not redeemed within fifteen days of mailing of the notice required by RCW 46.52.1194 shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.52.112.

Sec. 5. Section 5, chapter 281, Laws of 1975 1st ex. sess. and RCW 46.52.1196 are each amended to read as follows:

(1) Any towing firm removing a vehicle(s) from private property pursuant to RCW 46.52.118, 46.52.119, or 46.52.1192 shall release ((such)) the vehicle to the owner, operator, driver, or authorized designee thereof upon the presentation to any person having custody of ((such)) the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such motor vehicle((-such)). Commercially reasonable tender ((to)) shall include, without limitation, cash, personal checks drawn on ((local)) in-state banks with proper identification, and valid and appropriate credit cards((-PROVIDED HOWEVER, THAT)). Any person who stops payment on a personal check with intent to defraud a

towing firm ((which)) that has provided a service pursuant to this section((-)) or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees((-PROVIDED FURTHER, That every towing firm providing service pursuant to this section shall post a true copy of this section in a conspicuous place upon its business premises: PROVIDED FURTHER, That)).

(2) If the owner, operator, driver, or authorized designee thereof((-such)) provides adequate proof of his financial responsibility, employment, and residence in the community to any person having custody of any towed, removed, impounded, or stored motor vehicle, ((then)) the motor vehicle shall be released without payment((-)) with the understanding that such costs shall be paid within thirty days, or shall be recoverable through an action by law.

(3) A towing firm providing service under this section shall post a true copy of this section in a conspicuous place upon its business premises.

Sec. 6. Section 2, chapter 111, Laws of 1971 ex. sess. as last amended by section 19, chapter 178, Laws of 1979 ex. sess. and RCW 46.52.150 are each amended to read as follows:

Notwithstanding any other provision of law, any law enforcement officer having jurisdiction or any person authorized by the director of licensing shall inspect and may authorize the disposal of an abandoned junk motor vehicle. The officer or authorized person shall record the make of such motor vehicle((-)) and the serial number or vehicle identification number, if available, and shall also detail the damage or missing equipment to verify that the value of ((such)) the abandoned junk vehicle is equivalent only to the value of the scrap metal ((therein, only)) in it.

An abandoned junk motor vehicle is subject to the provisions of RCW 46.52.1194 and section 4 of this act.

Any surplus moneys arising from the disposal of abandoned junk motor vehicle shall be deposited in the county general fund.

Sec. 7. Section 4, chapter 178, Laws of 1979 ex. sess. and RCW 46.52.190 are each amended to read as follows:

(1) When a vehicle or hulk is impounded pursuant to RCW 46.61.565 or 46.52.180, the governmental agency at whose direction the impoundment was effected shall, within twenty-four hours after the impoundment, mail notification of the impoundment to the last registered owner and the legal owner of the vehicle as shown on the records of the department or as otherwise reasonably ascertainable. The notification shall contain a certificate of mailing and shall inform the registered and legal owners of the impoundment, redemption procedures, and opportunity for a hearing to contest the basis for the impoundment. The notice need not be mailed if the vehicle is

APPENDIX D

FINAL LEGISLATIVE BILL REPORT

SB 3846

C 274 L 83

BY Senators Talmadge, Warnke and Vognild

Providing for the redemption of vehicles impounded by cities and towns.

SENATE COMMITTEE on Transportation

HOUSE COMMITTEE on Transportation

SYNOPSIS AS ENACTED

BACKGROUND:

A recent U.S. District Court decision found that Washington State's private impoundment statutes do not provide due process with respect to timely notice and hearings before an unauthorized or abandoned vehicle may be sold.

Vehicles impounded at the request of private parties may now be redeemed by paying towing and storage charges by credit cards or checks drawn on in-state banks. However, the ordinances of a number of cities and towns in the state presently require that a vehicle impounded by the police may be redeemed only after the towing and storage fees have been fully paid for in cash.

SUMMARY:

All vehicles towed from private property, whether abandoned or not, and including abandoned junk motor vehicles and abandoned hulks, are subject to the same requirement for written notice of statutory procedures for redemption and right to a hearing prior to sale.

After removing a vehicle from private property, the towing firm must notify the law enforcement agency with jurisdiction over the place of impoundment of the impound, including a complete identification of the vehicle. This notification is to include an immediate radio or telephone call and a written notice to the law enforcement agency within 24 hours.

When any vehicle remains unclaimed after 24 hours, the towing firm must, using certified mail, notify the registered and legal owners of the vehicle by the end of the next business day: (1) where the vehicle is located and the 24 hour phone number where arrangements

for redemption of the vehicle may be made, (2) what estimated costs for towing and storage are, (3) what procedures for redemption apply and of the right to a hearing to contest the impoundment and charges, and (4) that the vehicle will be sold at public auction if not reclaimed within 15 days of mailing.

Persons redeeming vehicles impounded from private property must be given a written notice of right of redemption and opportunity for a hearing, accompanied by a form to be used for requesting the hearing, and a copy of the towing and storage receipt.

All vehicles impounded from private property may be redeemed under current law permitting payment in cash, personal checks drawn on in-state banks with proper identification and valid credit cards. If a hearing is requested, a vehicle may be redeemed pending the outcome by posting with the registered disposer, to be held in trust, a bond sufficient to cover accrued towing and storage charges.

A request for hearing is timely only if filed with the District Court for the jurisdiction in which the vehicle was impounded within ten days of the date the notification of impoundment was mailed or delivered to the registered and legal owners.

Within five days of receiving the request for a hearing, the Court shall notify the registered disposer and the registered and legal owners in writing of the hearing date and time. The District Court will proceed to determine whether the impoundment was proper and whether towing and storage fees shall be assessed. If the party requesting the hearing does not prevail, the towing and storage costs become due and payable and the expenses of the hearing will be assessed against the owner. If the impoundment is found invalid, the owner shall bear no costs for the impoundment or storage charges and any bond or other security shall be released or discharged.

Legal and registered owners must both receive notice and are entitled to a hearing regarding private and police impoundments.

Vehicles impounded by order of a county, city or town shall be redeemed only by the registered owner or authorized agent upon evidence of proof of ownership. The towing contractor must accept cash, major bank credit cards, certified bank drafts, money orders, and personal checks drawn on in-state banks. Acceptance of the check may be refused if the contractor has reasonable cause to believe the tendered check is uncollectible under standards adopted by the county, city or town. If a check is dishonored, the drawer of the check shall be liable to the towing firm for damages equalling twice the towing charges, plus costs and reasonable attorneys fees.

The county, city or town may authorize the release of a vehicle prior to payment of the towing or impoundment fees if the owner requests a hearing as to the propriety of the impoundment.

VOTES ON FINAL PASSAGE:

Senate	44	0	
House	96	0	(House amended)
Senate	44	1	(Senate concurred)

EFFECTIVE: May 17, 1983

APPENDIX E

(3) Within fifteen days of the sale of an abandoned vehicle at public auction, the towing operator shall send a copy of the abandoned vehicle report showing the disposition of the abandoned vehicle to the crime information center of the Washington state patrol.

NEW SECTION. Sec. 11. (1) In the case of an unauthorized vehicle impounded from public property, the law enforcement agency or other public official directing the impoundment, or in the case of a vehicle impounded from private property, the impounding towing operator, shall notify the legal and registered owners of the impoundment of the unauthorized vehicle. The notification shall be sent by first-class mail within twenty-four hours after the impoundment to the last known registered and legal owners of the vehicle, as provided by the law enforcement agency. The notification shall include the name of the impounding tow firm, its address, and telephone number. The notice shall also include the location, time of the impound, and by whose authority the vehicle was impounded.

(2) In the case of an abandoned vehicle, within twenty-four hours after receiving information on the vehicle owners from the department through the abandoned vehicle report, the tow truck operator shall send by certified mail, a notice of custody and sale to the legal and registered owners.

REDEMPTION RIGHTS AND HEARING PROCEDURES

NEW SECTION. Sec. 12. (1) Vehicles impounded by registered tow truck operators pursuant to RCW 46.52.170, 46.61.565, or section 8 of this act may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized by the registered owner, or one who has purchased a vehicle from the registered owner, who produces proof of ownership or written authorization and signs a receipt therefor may redeem an impounded vehicle.

(b) The vehicle shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such motor vehicle. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. Any person who stops payment on a personal check or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2) (a) The towing company shall give to each person who seeks to redeem an impounded vehicle written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to

be used for requesting a hearing, and a copy of the tow and storage receipt. The towing company shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The district court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, and the registered and legal owners of the motor vehicle in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the charges.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be invalid, then the registered and legal owners of the vehicle shall bear no impoundment, towing, or storage costs, and any bond or other security shall be returned or discharged as appropriate, and the person who authorized the impoundment shall be liable for any towing, storage, or other impoundment charges permitted under this chapter.

(4) Any impounded vehicle not redeemed within fifteen days of mailing of the notice of custody and sale as required by section 11(2) of this act shall be sold at public auction in accordance with all the provisions and subject to all the conditions of section 13 of this act. A vehicle may be redeemed any time before the start of the auction upon payment of towing and storage costs.

APPENDIX F

(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer, and the driver, because of intoxication or otherwise, is mentally incapable of deciding upon steps to be taken to safeguard his or her property;

(5) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property.

Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

***NEW SECTION. Sec. 11. A new section is added to chapter 46.55 RCW to read as follows:**

The Washington state patrol, under its authority to remove vehicles from the highway, may remove the vehicles directly, through towing operators appointed by the state commission on equipment and called on a rotational or other basis, through contracts with towing operators, or by a combination of these methods. When removal is to be accomplished through a towing operator on a noncontractual basis, the commission may appoint any towing operator for this purpose upon the application of the operator. Each appointment shall be contingent upon the submission of an application to the commission and the making of subsequent reports in such form and frequency and compliance with such standards of equipment, performance, pricing, and practices as may be required by rule of the commission.

An appointment may be rescinded by the commission at the request of the Washington state patrol upon evidence that the appointed towing operator is not complying with the laws or rules relating to the removal and storage of vehicles from the highway.

Rules adopted under this section are binding only upon those towing operators appointed by the commission for the purpose of performing towing services at the request of the Washington state patrol. Any person aggrieved by a decision of the commission made under this section may appeal the decision under chapter 34.04 RCW.

**Sec. 11 was vetoed, see message at end of chapter.*

Sec. 12. Section 12, chapter 377, Laws of 1985 and RCW 46.55.120 are each amended to read as follows:

(1) Vehicles impounded by registered tow truck operators pursuant to RCW ((46-52-170-46-61-565- or)) 46.55.080, section 6, or 10 of this act may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, or one who has

purchased a vehicle from the registered owner((s)) who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle.

(b) The vehicle shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such ((motor)) vehicle. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. Any person who stops payment on a personal check, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2) (a) The ((towing company)) registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, and a copy of the ((tow)) towing and storage ((receipt)) invoice. The ((towing company)) registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The district court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, and the registered and legal owners of the ((motor)) vehicle and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the ~~((charges))~~ fees.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be invalid, then the registered and legal owners of the vehicle shall bear no impoundment, towing, or storage ~~((costs))~~ fees, and any bond or other security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment ~~((charges))~~ fees permitted under this chapter.

(4) Any impounded abandoned vehicle not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(2) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle may be redeemed at any time before the start of the auction upon payment of towing and storage ~~((costs))~~ fees.

Sec. 13. Section 13, chapter 377, Laws of 1985 and RCW 46.55.130 are each amended to read as follows:

(1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(2) to the registered and legal owners, the vehicle ~~((or truck))~~ remains unclaimed and has not been listed as a stolen vehicle, then the registered ~~((disposer))~~ tow truck operator having custody of the vehicle ~~((or truck))~~ shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the vehicle is located not less than three days before the date of the auction. The ~~((advertisement))~~ notice shall contain a description of the vehicle, including the make, model, year, and license number and a notification that a three-hour public viewing period will be available before the auction. The auction shall be held during daylight hours of a normal business day.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid.

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid.

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(g) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record within one year from the date of the auction, the surplus moneys shall be remitted to ~~((the registered))~~ such owner;

(h) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within thirty days sell the ~~((unclaimed abandoned))~~ vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report affidavit of sale, or the operator shall apply for title to the vehicle.

(3) (a) In no case may the accumulation of storage charges exceed fifteen days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(2).

(b) The failure of the registered ~~((disposer))~~ tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available.

Sec. 14. Section 14, chapter 377, Laws of 1985 and RCW 46.55.140 are each amended to read as follows:

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. ~~((However,))~~ The lien does not apply to

SECTIONAL DIGEST OF SSB 5124

- SECTION 1: Definition Section
- SECTION 2: Minimum insurance limits are reduced. Liability for bodily injury or property damage is reduced from \$250,000 to \$100,000. Fire and theft insurance is reduced from \$100,000 to \$50,000.
- SECTION 3: Language is clarified to specify that each separate business location requires a separate registration under this chapter.
- SECTION 4: Language clarified on vehicle status.
- SECTION 5: Law enforcement officer may have a vehicle impounded pursuant to a court order or writ.
- Clarifies that a written impound request must be signed for all impounds.
- SECTION 6: Existing language from 46.52 is brought into 46.55 to consolidate within 46.55 RCW all impound authority. This is the authority under which the law enforcement tags a vehicles left along side the road, and after a 24 hour period they have the vehicle impounded.
- SECTION 7: Proper statue designation is inserted for personal property disposal by local police and sheriff.
- SECTION 8: Language is added to clarify that owner notification need not be sent when the vehicle is impounded pursuant to a writ or court order.
- DOL is required to return to the tow truck operator the owner information on an impounded vehicle within 48 hours.
- If an AVR is returned to a registered tow truck operator with no owner information found by the department, the operator may proceed with an inspection of the vehicle to determine if owner information is within the vehicle.
- SECTION 9: The initial notification, that is sent within 24 hours of the impound, to the last known legal and registered owners shall also contain the opportunity to a hearing form.

- SECTION 10: Existing language used by law enforcement to impound from 46.61 is brought into 46.55 to consolidate within 46.55 RCW all impound authority. NO CHANGES FROM CURRENT STATUTE.
- SECTION 11: Existing language which authorizes the Washington State Patrol to use towing operators appointed by the state Commission on Equipment from 46.61 is brought into 46.55 to consolidate within 46.55 RCW all impound authority. NO CHANGES FROM CURRENT STATUTE.
- SECTION 12: Statute citation changes are made. A person authorized in writing by the registered owner may redeem an impounded vehicle. Language is clarified.]
- SECTION 13: Storage charges are limited to no more than \$10 in any 24 hour period.
- Language corrections, i.e. updating previous registered disposer language to current registered tow truck operator.
- SECTION 14: Language clarified on filing on sellers report.
- SECTION 15: Person or agency who authorized impound is to be included in the information contained on the 24 hour notice to legal and registered owners.
- An itemized invoice is added to the list of documents which must be retained in the transaction file.
- SECTION 16: Language is clarified.
- SECTION 17: The application of the section is clarified.
- SECTION 18: The word registered is inserted to specify those licensed by the state.
- SECTION 19: Language is clarified that both legal and registered owners have the right to be notified in the case of a junk vehicle disposal. This application is consistent with other due process notifications afforded under 46.55.
- SECTION 20: Deletes obsolete automobile hulk language.
- SECTION 21: Repeals those sections which are transferred into 46.55.

APPENDIX G

(c) No notices need be sent to the legal or registered owners of an impounded vehicle if the vehicle has been redeemed.

Sec. 11. Section 12, chapter 377, Laws of 1985 as amended by section 12, chapter 311, Laws of 1987 and RCW 46.55.120 are each amended to read as follows:

(1) Vehicles impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle, or one who has purchased a vehicle from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle.

(b) The vehicle shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2) (a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. If the hearing request is not

received by the district court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The district court, within five days after the request for a hearing, shall notify the registered tow truck operator; the person requesting the hearing if not the owner, ((and)) the registered and legal owners of the vehicle, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be ((invalid)) in violation of this chapter, then the registered and legal owners of the vehicle shall bear no impoundment, towing, or storage fees, and any bond or other security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment for reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:.....
 YOU ARE HEREBY NOTIFIED JUDGMENT was entered
 against you in the Court located at in
 the sum of \$....., in an action entitled Case
 No. YOU ARE FURTHER NOTIFIED that attorneys fees

and costs will be awarded against you under RCW ... if the judgment is not paid within 15 days of the date of this notice.
DATED this ... day of ..., 19

Signature

Typed name and address
of party mailing notice

(4) Any impounded abandoned vehicle not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(2) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle may be redeemed at any time before the start of the auction upon payment of towing and storage fees.

Sec. 12. Section 13, chapter 377, Laws of 1985 as amended by section 13, chapter 311, Laws of 1987 and RCW 46.55.130 are each amended to read as follows:

(1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(2) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, then the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. The notice shall contain a description of the vehicle including the make, model, year, and license number and a notification that a three-hour public viewing period will be available before the auction. The auction shall be held during daylight hours of a normal business day.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

((b)) (h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

((b)) (i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within thirty days sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4) (a) In no case may the accumulation of storage charges exceed fifteen days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(2).

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available.

Sec. 13. Section 14, chapter 377, Laws of 1985 as amended by section 14, chapter 311, Laws of 1987 and RCW 46.55.140 are each amended to read as follows:

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vehicle that is not permanently attached to or is not an integral part of the vehicle. The registered tow truck operator also has a deficiency claim against the registered owner of the vehicle for services provided in the towing and storage of the vehicle not to exceed the sum of three hundred dollars less the amount bid at auction, and for vehicles of over ten thousand pounds gross vehicle weight, the operator has a deficiency claim of

APPENDIX H

FINAL BILL REPORT

SB 5440

C 111 L 89

BY Senators von Reichbauer, Bender, Patterson, DeJarnatt, Conner and Hansen; by request of Legislative Transportation Committee

Regulating tow trucks.

Senate Committee on Transportation

House Committee on Transportation

SYNOPSIS AS ENACTED

BACKGROUND:

The Department of Licensing (DOL) and the Washington State Patrol (WSP) jointly administer the state's tow truck program. In 1985, DOL and WSP were given the authority to regulate impoundment and redemption of motor vehicles.

The Joint Subcommittee on Driver and Vehicle Programs of the Legislative Transportation Committee, the affected agencies and the industry recommend changes to the tow truck program.

SUMMARY:

The tow truck program is amended. RCW 46.61.563 is repealed and redefined in 46.55.

Each tow truck business location must have a sign, readable from the street, that displays the firm's name. Normal business hours are defined as 8:00 a.m. to 5:00 p.m. on weekdays, excluding weekends and holidays. Mail is to be received at business locations. Addresses of all storage lots are required. File keeping requirements for a "master log" are specified.

To be licensed, a tow truck operator must have an inspection form at the time of application. Specific identification of tow trucks is required on the application. Each tow truck must have its own permit. A decal is allowed in place of the paper permit. Failure to keep insurance in effect or cancellation of insurance automatically cancels the license.

Operators are prohibited from associating in any way with businesses whose main function is to authorize the impounding of vehicles. Language is added that prohibits collusion between a tow truck operator and a person who authorizes impounds.

Operators will notify all impounded vehicle owners of an impoundment. Such notice shall identify the person or agency authorizing the impound. Language is clarified as to who may not provide impound authorization. If an impound is in violation of this chapter, the district court shall enter a judgment of not less than \$50 a day against the person or agency who illegally authorized the impound. Inclusion of vehicle impoundment language in local ordinances is mandated.

A new section for fees is added. Fees stated on the rate sheet must be adequate to cover services, and tow and storage service must be charged on an hourly basis.

A person determined and verified by the operator to have the permission of the registered owner of the vehicle may recover it. A person who stops payment on a credit card charge used to recover a vehicle is liable to the towing firm for twice the amount of the bill.

The required notice for auctions of unclaimed vehicles is to accommodate weekly newspaper schedules. Bidders at auctions must provide names, addresses and telephone numbers. Auction fees or a buyer's fee may not be charged.

All traffic infractions issued under this chapter are put into the court system. The Department of Licensing's administrative hearing authority is narrowed to licensing violations of this chapter but broadened to allow for a combination of administrative actions. Violations in this section are punishable as a traffic infraction, with a monetary penalty of not less than \$250. Collusion is punishable as a gross misdemeanor.

The Department of Transportation's tow trucks are exempt from the immediate statutory authorization requirements.

A study is to be conducted by the Washington State Patrol and Department of Licensing to determine at what level the registration fees of tow truck operators should pay to cover the cost of the tow truck program.

VOTES ON FINAL PASSAGE:

Senate	47	0	
House	96	0	(House amended)
Senate	46	0	(Senate concurred)

EFFECTIVE: July 23, 1989